PUBLIC PROSECUTOR v. TAN HOCK SING

[A.Cr.J. (Hashim J.) December 31, 1962]

[Kota Bharu — Criminal Appeal Nos. 21 & 22 of 1963]

Prevention of Corruption Ordinance, 1950, ss. 3 (b) & 5—"Tea money" to police officer for favour showed in the course of smuggling—Alternative charge under Penal Code—Whether police officer a customs officer—Duties of a police officer.

Penal Code, ss.116, 165—Alternative charge under—"Tea money" to police officer for favour showed in the course of smuggling—Whether acquittal under the main charge was acquittal under alternative charge.

Police Ordinance, 1952, s.33(3)(d) and 35—Whether police officer a customs officer under the Customs Ordinance.

Customs Ordinance, 1952, ss. 2 and 7—Whether police officer a customs officer.

Criminal Procedure—Charge on same facts in the alternative—Court to record finding on each count—Criminal Procedure Code (Cap. 6), s.166.

The accused was charged under section 3(b) of the Prevention of Corruption Ordinance, alternatively under sections 116 and 165 of the Penal Code for giving $70 to a police inspector as "tea money" for a favour the latter had "showed" to him when he brought in rice from Thailand to Rantau Panjang. At the end of the case for the prosecution the learned President recorded "There is no case to answer. Accused acquitted and discharged." On appeal by the Public Prosecutor,

Held: when a police officer in a position to do a favour to another person likely to require such favour received from such other any money or other valuable thing without consideration or any ostensible reason, then these very circumstances afford reasonable and sufficient grounds for holding a sufficient case was made out by the prosecution under the main or alternative charge. It was for the defence in view of section 5 of the Prevention of Corruption Ordinance to prove the contrary. The decision of the learned President was therefore insupportable.

Sections 2 and 7 of the Customs Ordinance, 1952 and sections 33(3)(d) and 35 of the Police Ordinance, 1952 relating to powers and duties of a police officer discussed.

MAGISTRATE'S CRIMINAL APPEAL.

Tengku Ahmad Rithauddeen (Deputy Public Prosecutor) for the appellant.

H. L. Wrigglesworth for the respondent.

Hashim J.: The accused was charged under section 3(b) of the Prevention of Corruption Ordinance, 1950, alternatively under sections 116 and 165 of the Penal Code. Accused claimed trial to both charges. At the end of the case for the prosecution the learned President recorded as follows:—

"There is no case to answer. Accused acquitted and discharged."

The Public Prosecutor appealed against this decision.

It is not clear from the record whether the learned President found there was no case to answer in respect of the charge under the Prevention of Corruption Ordinance or in respect of the alternative charge under the Penal Code or in respect of both. There appears to be no local authority on this point. The only direct authority one finds is in "Sohoni's Indian Criminal Procedure Code" 15th Edition at page 1357:—

"20. Where the accused is charged on the same facts in the alternative and on a graver or a less serious count, the Court should record a definite finding on each count."

If a person is told, I propose to prove you are guilty of this or that offence, the intention is that I shall try to prove the first, if not I shall prove the alternative. Otherwise an alternative charge is meaningless.

The facts in this case do not appear to be disputed. On 25th October, 1961 Senior Inspector Abdul Manaf bin Hashim, the officer in charge of police districts Lubok Store, Jeram Perdah and Rantau Panjang was travelling in a train from Rantau Panjang to Pasir Mas. Also in the train was the accused. When the train arrived at Pasir Mas the same day the Inspector got down from the train. The accused also got down and called out to the Inspector. The Inspector went up to the accused. The accused gave the Inspector a roll of paper which contained $70 and which the accused said was for the Inspector's tea money. The accused said it was for the favour the Inspector had "showed" to him when he (the accused) had brought in rice from Thailand to Rantau Panjang. The $70 was produced in Court and became Exhibit P4. The Inspector did not arrest the accused there and then but went to Kota Bharu and reported the matter to Inspector Ali bin Mokhtar who was the officer in charge of Special Crime in Kelantan and Trengganu. Inspector Abdul Manaf stated he was surprised when accused offered him $70. He had not shown any favour to the accused.

The learned President in his grounds of judgment stated that no evidence was adduced to show that Inspector Abdul Manaf "had done an act in relation to his principal's affairs or business, which it was his duty to perform and that the accused had given him $70 cash so as to induce P.W.1 (Inspector Manaf) to forbear from doing his duty." Presumably what the learned President meant was that in his opinion it was not the duty of Inspector Abdul Manaf to deal with rice smuggling and the $70 was not an inducement or reward for doing or forbearing to do any act in relation to his principal's affairs or business. Presumably the learned President came to this opinion as a result of what Inspector Abdul Manaf stated in his cross-examination.

Inspector Abdul Manaf stated it was the Customs business if rice was brought to Rantau Panjang and not the business of the Police. The Inspector went on to say that he had no business with rice as a police officer. I take this to mean that according to Inspector Abdul Manaf the Police are not concerned with rice smuggling. I think Inspector Abdul Manaf is not correct to say that the smuggling of rice is the concern of the Customs officers. Under section 2 of the Customs Ordinance, 1952 an "officer of Customs" means a police officer and under section 7 of the said Ordinance all police officers not below the rank of Inspector shall have and may exercise all the powers by this Ordinance conferred on senior officers of Customs. Furthermore, under section 33(3)(d) of the Police Ordinance, 1952 it shall be the duty of police officers to take lawful measures for assisting in carrying out revenue and excise laws. Under section 35 of the Police Ordinance, 1952 a police officer is deemed to be always on duty to perform the duties and exercise the powers granted to him under the Police Ordinance, 1952 or any other written law at any place in the Federation where he may be doing duty.

Under section 57(1)(i) of the Evidence Ordinance the Court can take judicial notice of the geographical divisions of the world. Therefore, the Court can take judicial notice that Rantau Panjang is a border town vis-a-vis Thailand.

Under L.N. 166 dated the 24th day of March, 1953 Rantau Panjang is designated as a place of import and export by road or railway of all goods (Federal Subsidiary Legislation, 1953, page 255).

Under the Customs (Prohibition of Imports) Order, 1954 (L.N. 624 dated 26th October, 1954) the importation of rice and padi in whatever form is prohibited except under and by virtue of an import licence.

Therefore I am of the opinion that when a police officer, in a position to do a favour to another person likely to require such favour, received from such other any money or other valuable thing without consideration or any obstensible reason, then these very circumstances afford reasonable and sufficient grounds for holding a sufficient case made out by the prosecution whether under section 165 of the Penal Code or section 3(b) of the Prevention of Corruption Ordinance, 1950, in the absence of evidence in rebuttal. *A fortiori,* where there is, as in this case a charge under the Ordinance of 1950, being alternative to a charge under the Penal Code, clearly a presumption of law under section 5 of the Ordinance lays the onus on the defence of proving the contrary. Hence the decision of the learned President, which takes no account, or refused to take any account, of the provisions of section 5 is manifestly insupportable.

The appeal is allowed and the order of acquittal is accordingly set aside and I direct that the accused/respondent be tried afresh before another President.

Appeal allowed.

Solicitors:—*Wrigglesworth & Co.*

VALLENTINE, DUNNE & ASSOCIATES LTD. v. ANDREW S. H. CHANG

[O.C.J. (Gill J.) January 12, 1963]

[K.L. — Civil Suit No. 300 of 1961]

Principal and Agent—Power of attorney—Contract by attorney—whether contract under power of attorney.

Contract—Survey as preliminary to mining operations—Whether completed contract.

The defendant on payment of a sum of $5,000 obtained a power of attorney from one Sze Chok Pang concerning all his present and future estate, right, title and interest in the land which formed the subject matter of a prospecting permit issued to the said Sze Chok Pang. The defendant further paid a sum of $15,000 to a person with whom Sze Chok Pang had entered into an agreement relating to the permit to have the agreement cancelled.

The defendant and Sze Chok Pang at a joint interview with the plaintiffs arranged with the plaintiffs to carry out a prospecting survey of the land. The plaintiffs were aware that the permit was in the name of Sze Chok Pang and that the defendant had power of attorney in respect of it.

In a claim by the plaintiffs against the defendant for their professional fees and disbursements as mining engineers, the defendant pleaded (1) agency under the power of attorney and (2) that there was no completed contract but only an arrangement under which plaintiffs were to provide an estimate for a contract.

Held: (1) the various payments made by the defendant indicated that he was not acting as an agent but in his own right and the arrangement entered into with the plaintiffs was in his own right and not as agent;

(2) the arrangement was a completed contract to survey and the defendant must therefore pay the amount claimed to the plaintiffs.

ACTION.

S. D. K. Peddie for the plaintiffs.

A. L. Hills for the defendant.

Cur. Adv. Vult.

Gill J.: This is an action by the plaintiffs for the recovery of a sum of $7,879.07, being their professional fees and disbursements as mining engineers and licensed surveyors in respect of survey and prospecting work carried out by them at the defendant's request in an area of about 800 acres in the Santi Forest Reserve, Johore.